

**BEFORE THE STATE BOARD OF MEDIATION
STATE OF MISSOURI**

INTERNATIONAL ASSOCIATION OF)	
FIREFIGHTERS, LOCAL 3016,)	
)	
Petitioner,)	
)	
vs.)	Public Case No. 86-005
)	
CITY OF CARTHAGE,)	
)	
Respondent.)	

JURISDICTIONAL STATEMENT

This case appears before the State Board of Mediation upon the filing by International Association of Firefighters, Local 3016, of a petition for certification as public employer representative of all non-supervisory employees of the Carthage fire department. A hearing was held on January 7, 1986, in Carthage, Missouri, at which representatives of Local 3016 and the City were present. The case was heard by State Board of Mediation Chairman Mary Gant, employer member Milton Talent and employee member James O'Mara. The State Board of Mediation is authorized to hear and decide issues concerning appropriate bargaining units by virtue of Section 105.525, RSMo. 1978.

At the hearing, the parties were given full opportunity to present evidence. The Board, after a careful review of the evidence, sets forth the following findings of fact and conclusions of law.

FINDINGS OF FACT

The Carthage fire department consists of twenty-five full-time employees, namely: a fire chief, an assistant fire chief, three captains, three lieutenants, two fire safety officers, three engineers, three drivers, and nine firefighters. All employees work

from the department's only fire station. The chief and assistant chief work a five day, forty hour week. The fire safety officers work four ten-hour days. All other employees work twenty-four hour shifts, with each shift consisting of seven man crews which include a captain, lieutenant, engineer, driver and three firefighters.

The Carthage fire department is directly supervised by the general superintendent of the Board of Public Works. The general superintendent reports to a four member board with matters concerning the fire department. The fire chief reports to the general superintendent. An informal chain of command exists within the department whereby the rank and file members discuss problems with their shift captains who in turn consult with the chief or assistant chief. The fire safety officers, however, report directly to the chief or assistant chief.

The chief and assistant chief are salaried employees and do not receive overtime. In addition to their salary, both the chief and assistant chief are provided vehicles which they use both on and off duty hours. All other employees of the fire department are paid on an hourly basis and are allowed overtime. The monthly pay scale for the fire department employees is as follows: chief, \$2,463.00; assistant chief, \$2,048.00; captain, \$1,771.00; lieutenant, \$1,641.00; fire safety officer, \$1,641.00; engineer, \$1,587.00; driver, \$1,560.00; firefighter, \$1,167.00 to \$1,539.00.

CAPTAINS: The captains play no role in the hiring of other employees, in that the chief and assistant chief, along with the general superintendent, have the exclusive authority to hire employees. Any promotion within the department is made by the Board of Public Works upon the recommendation of the general superintendent and the chief. Evidence adduced at the hearing indicated that on one occasion the captains voted as to whether an employee would be promoted to lieutenant. However, the captains have no access to the employee personnel files and do not routinely submit employee evaluations to be used for promotions. Instead, promotions are largely determined by standardized test scores.

The evidence as a whole indicates there are very few discipline problems within the fire department. Should a problem arise, it is usually brought to the attention of the chief. The chief routinely investigates the problem, discussing the matter with both the captain and the involved employee. Although captains have at times made recommendations concerning disciplinary matters, it is clear that disciplinary action is taken only once the chief makes an independent investigation.

The captains are in charge of all employees assigned to their shift. The men are assigned various duties by the captains. Those duties are routine and predetermined by discussions between the chief, assistant chief and the captains with said duties being posted in the firehouse. While on duty, the captains spend approximately 90% of their time doing work similar to the work done by other employees. The captain performs maintenance on vehicles and equipment, assists in housecleaning chores, and attends daily training sessions at the fire station. At the site of a fire, a captain assumes command. However, each member of the shift has predetermined duties and have been assigned specific jobs prior to the arrival at the fire scene. Either the chief or the assistant chief is present at all structural fires.

FIRE SAFETY OFFICERS: There are two fire safety officers in the Carthage fire department, a position created approximately three years ago. Approximately 85% of the fire safety officers' time is spent in building code enforcement, with the remaining time in educational services, inspections, and the investigation of fires. The fire safety officers report to work at the fire station, and work four ten-hour days per week. The fire safety officers receive the same benefits concerning insurance, vacations, etc. as do other fire department employees. They are supervised by the chief and the assistant chief and are in daily contact with other fire department employees, although their job functions are quite different from the rank and file members. Although the fire safety officers are required to have knowledge of firefighting procedures, they do not generally report to the fire scene.

CONCLUSIONS OF LAW

Local 3016 has petitioned to be certified as public employee representative of a bargaining unit comprised of all Carthage fire department employees, excluding the chief and assistant chief. The City contends that the captains are supervisory employees and therefore should be excluded from the bargaining unit. Further, the City contends that the fire safety officers do not share a community of interest with other department employees and therefore should also be excluded from the bargaining unit. The issues before the Board, therefore, are whether the captains and fire safety officers be included in the appropriate bargaining unit. An appropriate bargaining unit is defined by Section 105.510 (1) RSMo. 1978, as:

"A unit of employees at any plant or installation or in a craft or in a function of a public body which establishes a clear and identifiable community of interest among the employees concerned."

Missouri statutory law does not provide further guidelines for determining what constitutes a "clear and identifiable community of interest." However, the Board has consistently held that supervisors cannot be included in the same bargaining unit as the employees they supervise. St. Louis Firefighters Assn., Local 73 v. City of St. Louis, Missouri, Case No. 76-013 (SBM 1976); See, Golden Valley Memorial Hospital v. Missouri State Board of Mediation, 559 SW2d 581 (Mo.App. 1977). To determine the appropriate bargaining unit as it concerns the captains, the Board must determine whether the captains are in fact supervisors. In determining the supervisory status of employees within bargaining units, the Board has consistently examined the following factors:

- (1) The authority to effectively recommend the hiring, promotion, transfer, discipline, or discharge of employees.
- (2) The authority to direct and assign the work force, including a consideration of the amount of independent judgment and discretion exercised in such

matters.

- (3) The number of employees supervised, and the number of other persons exercising greater, similar or lesser authority over the same employees.
- (4) The level of pay including an evaluation of whether the supervisor is paid for his skill or for supervision of employees.
- (5) Whether the supervisor is primarily supervising an activity or primarily supervising employees.
- (6) Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employees.

The City contends that based upon the above factors, the Carthage fire department captains are supervisors. In short, the City asserts that because the captains are in charge of certain activities and have the authority to direct firefighters, they exercise judgment sufficient to be considered supervisors. For the reasons set out below, the Board rejects the City's arguments. The evidence as a whole indicates that the captains play no role in the hiring of new employees. Similarly, captains play no role in the discharge of an employee. Concerning promotion, on at least one occasion the evidence indicated that captain's recommendations were considered in the promotion of an employee to the position of lieutenant. However, it is clear that there is no formalized procedure whereby the captains become involved in the promotion of another employee. The captains do not evaluate employees, nor do they have access to the employees personnel files. Consequently, the Board must conclude that captains have no authority to effectively recommend the promotion of other fire department employees.

The captains' authority to discipline is generally limited. If a discipline problem arises, the matter is taken up with the chief who does an independent investigation concerning any disciplinary measures that may be needed. In no case would a disciplinary measure be levied without an independent investigation of the surrounding circumstances by the chief. Consequently, the Board must conclude that the captains'

involvement in the disciplinary process is insufficient to ascribe to the captains supervisory status.

With respect to the direction of the firefighters, it is clear that the captain is in charge while at the firehouse or at the fire scene when a chief or the assistant chief is not present. The record is clear, however, that the chief or the assistant chief appears at all structural fires. Also, the authority given the captains is set out in rules promulgated by the chief and assistant chief. Accordingly, the board finds that the captains' direction of the firefighters at the firehouse and the scene of a fire involves little use of independent judgment.

Important in the Board's decision that captains are not supervisors is that captains spend a substantial majority of their time doing the same job as those employees working with them. The captains assist in maintaining vehicles and equipment and assist in general housekeeping chores at the fire station. Also, captains work along side the firefighters during a fire, handling the fire hose or doing whatever is necessary to extinguish the fire. Consequently, the captains clearly must be considered working supervisors because they spend little time in supervising the firefighters without also working.

A careful review of the foregoing indicates that the captains do not possess the authority to be considered true supervisors. Captains do not effectively recommend the hiring, transfer or promotion of employees. Their authority to discipline is limited. Further, captains clearly work in conjunction with the firefighters in all activities. Consequently, the Board must conclude that the captains' position is analogous to that of a leadman and not that of a true supervisor.

The second issue before the Board is whether the fire safety officers of the fire department share a community of interest with the other members of the fire

department. In Service Employees International Union, Local 96 v. City of Blue Springs, Case No. 79-031 (SBM 1979), the Board discussed certain factors to be considered in determining whether an employee has a sufficient community of interest with other employees so as to be included in the same bargaining unit. Those factors include the amount of contact and interchange among the employees involved, similarity in pay and fringe benefits, common supervision and the other type of work done by the employee.

Although there is much similarity in pay and fringe benefits, common supervision among the employees, and some daily contact between the fire safety officers and other employees, the Board is not convinced that the fire safety officers share a community of interest with the rank and file members of the proposed unit. There is a great disparity between the type of work done by the fire safety officers as opposed to that done by the fire safety officers as opposed to that done by other employees. Although they are supervised by the Chief and Assistant Chief, Captains play no role in their work. The fire safety officers' main function involves enforcement of the City's building code. They work different hours and are paid overtime on a different basis from the other employees and are not required to assist in any firefighting duties. They are not required to wear uniforms at work and may use their personal vehicles in getting about their duties, being reimbursed for mileage when so doing. The fire safety officers are entirely different from the firefighters, but work at the firehouse only because of its convenience.

DECISION

It is the decision of the State Board of Mediation that an appropriate unit of employees is as follows: All employees of the Carthage fire department excluding the chief, assistant chief and fire safety officers.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the Chairman of the State Board of Mediation among the employees in the unit found appropriate, as early as possible, but not later than 30 days from the date below. The exact time and place will be set forth in the notice of election to be issued subsequently, subject to the Board's rules and regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during the period because of vacation or illness. Ineligible to vote are those employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election. Those eligible to vote shall vote whether or not they desire to be represented for the purpose of exclusive recognition by Local 3016, International Association of Firefighters.

It is hereby ordered that the city shall submit to the Chairman of the State Board of Mediation, as well as to Local 3016, within fourteen days from the date of receipt of this decision an alphabetical list of names and addresses of employees in the unit determined above to be appropriate who were employed during the payroll period immediately preceding the date of this decision.

Signed this 14th day of February, 1986.

STATE BOARD OF MEDIATION

(SEAL)

/s/ Mary L. Gant

MARY L. GANT, Chairman

/s/ Milton Talent

MILTON TALENT, Employer Member

/s/ James O'Mara

JAMES O'MARA, Employee Member